



**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA**

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Application for Rehearing of  
Resolution ESRB-8

Application No. A.18-08-007  
(Filed July 27, 2018,  
Refiled August 10, 2018)

**RESPONSE OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO  
APPLICATION FOR REHEARING OF RESOLUTION ESRB-8**

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**I.**

**INTRODUCTION**

Pursuant to Rule 16.1(d) of the California Public Utility Commission’s (Commission) Rules of Practice and Procedure, Southern California Edison Company (SCE) respectfully submits this Response to the Application for Rehearing (AFR) of Resolution ESRB-8 filed by the Zuma Beach FM Broadcasters.<sup>1</sup>

As the Commission recognized in approving Resolution ESRB-8, electric utilities have the authority to de-energize electricity in order to protect public safety under California Public Utilities Code (PU Code) Sections 451 and 399.2(a).<sup>2</sup> And as the Commission similarly recognized, de-energizing electricity can “save lives, protect property, and prevent fires.”<sup>3</sup> Resolution ESRB-8 was

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<sup>1</sup> Zuma Beach FM Broadcasters attempted to file their AFR on July 27, 2018. That filing was rejected by the Commission’s Docket Office and the AFR was refiled on August 10, 2018. Rule 16.1(d) states that a response to an AFR is due no later than 15 days after the day the AFR is filed, and, in the case of multiple applications for rehearing, the response is due 15 days after the date the last AFR is filed. In this case, the last filing date of the Zuma Beach FM Broadcaster’s AFR was August 10, 2018, making responses due on August 25, 2018. Since that date is a Saturday, responses to the AFR are due by August 27, 2018.

<sup>2</sup> See Resolution ESRB-8, at p.8, *available at* <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M218/K186/218186823.PDF>.

<sup>3</sup> *Id.* at p.9.

adopted in order to provide guidelines and requirements that Investor Owned Utilities (IOUs) must follow when an IOU must de-energize electricity during dangerous conditions as a measure of last resort. After considering comments made by various parties including many of the same arguments made by Zuma Beach FM Broadcasters, the Commission adopted Resolution ESRB-8. Thus, Resolution ESRB-8 is sound and should not be reheard. Moreover, the AFR should be denied as it fails to identify any legal errors in Resolution ESRB-8.<sup>4</sup>

## II.

### **RESPONSE**

#### **A. Resolution ESRB-8 Was Appropriately Adopted And Rehearing Is Improper**

When Resolution ESRB-8 was adopted by the Commission on July 12, 2018, the 2017 California wildfire season was the most destructive wildfire season on record, including five of the 20 most destructive fires in the state's history.<sup>5</sup> And 2018 is turning out to be no different. The July 2018 Mendocino Complex Fire has been classified as the largest fire in terms of acres burned in California history, while the July 2018 Carr Fire has been classified as the eighth largest fire.<sup>6</sup> As of August 27, 2018, California's fires have burned 1,112,457 acres<sup>7</sup>, damaged or destroyed more than 3,500 structures,<sup>8</sup> and resulted in six fatalities in 2018 alone.<sup>9</sup> And although electric utilities have been found

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<sup>4</sup> While denominated an Application for Rehearing, Zuma Beach FM Broadcasters also refer to their pleading as a "petition." See AFR, pages 3, 5, and 17.

<sup>5</sup> See Resolution ESRB-8, at p.2.

<sup>6</sup> CalFire, Fact Sheet *The Top 20 Largest California Wildfires* (August 17, 2018), available at [http://www.fire.ca.gov/communications/downloads/fact\\_sheets/Top20\\_Acres.pdf](http://www.fire.ca.gov/communications/downloads/fact_sheets/Top20_Acres.pdf).

<sup>7</sup> National Interagency Fire Center ("NIFC"), *National Year-to-Date Report on Fires and Acres Burned by State and Agency* (August 27, 2018), available at <https://gacc.nifc.gov/sacc/predictive/intelligence/NationalYTDbyStateandAgency.pdf>.

<sup>8</sup> NIFC, *National Large Incident Year-to-Date Report* (August 27, 2018), available at <https://gacc.nifc.gov/sacc/predictive/intelligence/NationalLargeIncidentYTDReport.pdf>.

<sup>9</sup> Sarah Ravani and Lauren Hernandez, *California Wildfires: Firefighter's death the 6th of 2018; Yosemite Reopens*, S.F. CHRONICLE (August 14, 2018), available at <https://www.sfchronicle.com/california-wildfires/article/Mendocino-Complex-fires-claim-first-life-5-000-13154845.php#photo-15986939>.

to be the cause of only five to ten percent of California’s overall wildfires,<sup>10</sup> given the increasing wildfire risk and resulting damages, SCE and other IOUs must consider de-energizing in the most extreme fire conditions.<sup>11</sup> Given that the Governor has declared devastating wildfires as the “new normal” and recognizing the potential increase of proactive de-energization measures to be taken by IOUs, the Commission passed Resolution ESRB-8 to provide guidelines and requirements that SCE and other IOUs to follow when forced to de-energize for public safety. In adopting Resolution ESRB-8, the Commission weighed public safety considerations from increased wildfire risk with the public safety consequences from de-energization. Thus, SCE respectfully requests that the AFR not be heard as the Commission fully considered related issues when adopting Resolution ESRB-8.

**B. Rehearing Is Improper As the AFR Is Not Legally Appropriate**

In addition to the fact that Resolution ESRB-8 was appropriately adopted, rehearing is improper as the AFR is not legally supported. “The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.”<sup>12</sup> An AFR is not the place to introduce new facts.<sup>13</sup> It must take the record as it is and, based solely on that record, demonstrate that the Commission’s decision commits legal error. As discussed in the following sections, the Zuma Beach FM Broadcasters have failed to identify legal errors in Resolution ESRB-8 and thus, the AFR must be denied.

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<sup>10</sup> According to CalFire, when analyzing the 10-year history of wildfires (2007–2016), approximately 5% of wildfires were caused by utility lines and when analyzing the 5-year history of wildfires (2012–2016), utility lines are listed to be the cause for approximately 9% of wildfires.  
[http://www.fire.ca.gov/fire\\_protection/fire\\_protection\\_fire\\_info\\_redbooks](http://www.fire.ca.gov/fire_protection/fire_protection_fire_info_redbooks)

<sup>11</sup> SCE believes the majority of these fires result from objects being blown into SCE facilities for which SCE has little to no control.

<sup>12</sup> Rule 16.1(c).

<sup>13</sup> See, *Re Calaveras Telephone Co., et al.*, Decision 10-10-036: “More importantly, any attempt to reopen the evidentiary record at the application for rehearing stage is improper, and should not be permitted.” (rev’d on other grounds.) See also, Decision 14-10-051, 2014 Cal. PUC LEXIS 521, \*1: “Rehearing applications must support their claims with specific reference to the record, and not seek to introduce extraneous material. We are ‘extremely reluctant’ to consider new factual material presented with a rehearing application – especially when other parties are not give an opportunity to formally review such material or cross-examine its sponsors.” *citing* Modifying D.10-12-052 and Denying Rehearing [D-11-04-034], p. 17, 2011 Cal. PUC LEXIS 246, \*31.]

**1. Zuma Beach FM Broadcasters's Notice Arguments Are Inapplicable**

On pages 2 and 5 of its AFR, Zuma Beach FM Broadcasters cite Public Utilities Code Sections 1711 and 311, which require the Commission to “seek the participation of those who are likely to be affected, including those who are likely to benefit from, and those who are potentially subject to, a decision in a proceeding.” Under the Public Utilities Code and the Commission’s Rules, “proceedings” are categorized as quasi-legislative, adjudicatory, and ratesetting.<sup>14</sup> Resolutions and the Draft Resolutions that precede them are not “proceedings” as that term is used in the Public Utilities Code and Commission Rules. The notice arguments on pages 5-7 of the AFR rely on statutes that are not applicable here.

In addition, page 9 of the AFR cites Public Utilities Code Section 311(g)(1), which requires that prior to voting on any decision, including resolutions, the Commission must serve the decision on parties and provide a 30-day review and comment period. This statute also applies to any alternate to any commission decision. The AFR asserts Section 311(g)(1) was not followed for the revisions made to Resolution ESRB-8. This is incorrect.

Rule 14.1 states: “a substantive revision to a proposed decision or draft resolution is not an ‘alternate proposed decision’ or ‘alternate draft resolution’ if the revision does no more than make changes suggested in prior comments on the proposed decision or draft resolution, or in a prior alternate to the proposed decision or draft resolution.” This describes the revisions to Draft Resolution ESRB-8. They were not “alternates” because the changes made reflected comments submitted by parties on the original Draft Resolution. The AFR is mistaken in asserting that the process leading to Resolution ESRB-8 violated Section 311(g)(1).

**2. Resolution ESRB-8 Does Not Violate Public Utilities Code Section 451**

Page 10 of the AFR asserts the Commission has “enabled and endorsed flagrant violations of PUC Section 451, by allowing Investor-Owned Utilities (IOUs) to evade their statutory mandate to furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities,

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<sup>14</sup> Public Utilities Code Section 1701.1(a).

equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.” The AFR then asserts that a system that cannot deliver power safely at wind below 92 miles per hour is “reasonably and per se a power system that is unsafe” not complying with Section 451.

This is an assertion without any basis in law or fact. There is no evidence before the Commission to support the claim that any utility system has not been designed, maintained, and operated in violation of Section 451. More important, the AFR fails to show how Resolution ESRB-8 violates that statute.

**3. Resolution ESRB-8 Does Not Violate Public Utilities Code Section 399.2**

Page 11 of the AFR assert that the Commission has “enabled and endorsed” violations of Public Utilities Code Section 399.2(a), which requires electrical corporations to make reasonable investments in their electric distribution systems. The AFR claims that allowing utilities to disconnect power to high fire threat areas means the utilities will no longer invest in their systems in violation of Section 399.2(a). There is no evidence to support this claim. SCE’s 2018 General Rate Case (A.16-09-001) has proposed billions of dollars of capital expenditures and operations and maintenance expenses to support the continued reliability and safety of its electrical system.

**4. Resolution ESRB-8 Does Not Violate Public Utilities Code Sections 454 Or 455**

Page 11 of the AFR asserts that Resolution ESRB-8 violates Public Utilities Code Sections 454(a) and 455(c). First, Zuma Beach FM Broadcasters may have mis-cited the statute. The AFR’s Section 455(c) argument claims that the law prohibits utilities from establishing or maintaining any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service. Thus the statute is inapplicable. The Commission authorized the procedures reflected in Resolution ESRB-8 removes them from the realm of “unreasonable” differences.

The AFR also argues on page 11 that Resolution ESRB-8 violates Section 454(a), which precludes any utility from changing a rate or altering a classification, contract, practice, or rule as to result in any new rate, except upon a showing before the Commission and a finding by the Commission

that the new rate is justified.” If the procedures authorized by Resolution ESRB-8 amount to a new “rate,” the fact that the Commission adopted Resolution ESRB-8 eliminates any violation of Section 454.

### **III.**

#### **CONCLUSION**

Resolution ESRB-8 was properly adopted after consideration of various concerns related to de-energization for public safety and thus, rehearing is improper. Moreover, the Zuma Beach FM Broadcasters AFR fails to demonstrate any legal errors in Resolution ESRB-8. Thus, the AFR should be denied.

Respectfully submitted,

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